

# ***SPECIAL EDUCATION ADVISORY PANEL***

**#13**

## ***FORMAL RECOMMENDATION***

***AND***

## ***FOLLOW-UP PROCEDURE***

The Advisory Panel makes the following formal recommendation to DESE in the area of Special Education.

### **RECOMMENDATION (02/17/06)**

That, at the SEAP regular meeting in April 2006, DESE present a process for notifying the SEAP of pending legislation, rule making, regulation, or policy changes and the like which impacts special education so as to allow SEAP an opportunity to exercise its duty to publicly comment upon such in accordance with 20 USC 1412(a)(21)(D).

### **DESE INITIAL RESPONSE (3/13/06)**

The following response was mailed via letter from Melodie Friedebach to Deana O'Brien, SEAP Chairperson, on March 13, 2006:

I understand that at the last Special Education Advisory Panel (SEAP) meeting concerns were raised regarding pending state legislation. Specifically, I understand the SEAP felt that the Department had failed to provide the SEAP with the opportunity for input on a legislative proposal that resulted in Senate Bill 834.

I am hoping to clear up what appears to me to be a misunderstanding on the distinction between legislation and regulation.

State and federal regulations implementing IDEA provide for the functions of the SEAP. One of those functions is to comment publicly on any rules or regulations proposed by the state education agency (DESE) regarding education of children with disabilities. There is no such requirement for the panel to review and comment on proposed state or federal legislation. Individual panel members certainly can comment on proposed legislation to individual sponsors or committees that hear legislative proposals. However, the Panel is not failing to perform a required function if it does not comment on proposed legislation.

State regulations are promulgated by the state agency in order to implement a law or statute. IDEA requires that proposed regulations are available to the public for 60 days for comment. Public hearings are required as part of that process. The DESE uses the Special Education List Serve (SELS) to inform all stakeholder groups, including the SEAP, of proposed regulations, dates for the public comment period, and locations for the public hearings. The DESE, after hearing comments from all stakeholders is required to respond to the comments received and make a final determination regarding the final regulations that are taken to the State Board of Education for approval. The final regulations become a part of our State Plan for Special Education and are filed with the Secretary of State and OSEP.

Legislation, also known as statute or law, is not within the power of a state agency, but rather is

an activity of the legislature. Legislation sometimes results from a state agency identifying a need. The need is sometimes articulated in a legislative proposal. The legislative proposal is not actually the state agency's proposal; rather, each state agency submits draft proposals to the State's Office of Budget and Planning. Ultimately, the governor's office decides which of the state agency draft proposals will be finalized and pursued. Sponsorship is then obtained by the State's Office of Budget and Planning (not by the state agency). Many times the state agency that initiated the draft proposal will be asked to submit proposed language for the actual statute or law. This language may or may not be used in the eventual bill offered in the House or the Senate by a legislative sponsor. When bills are filed by the sponsor, the public has a chance for input, as this is all a matter of public record. State agencies also have a chance for input just like the public. The bills are not filed by a state agency. Once a draft proposal is submitted by a state agency to the Office of Budget and Planning it is out of the state agency's hands. There really is no context within this process for input from a stakeholder group such as the advisory panel.

At times the Department has sought input from various stakeholders before identifying a need in a draft legislative proposal; this is not required by any law or regulation, and this has not been done where the proposals involved are for the purpose of complying with IDEA mandates and incorporating new IDEA requirements into existing state statutes. Senate Bill 874 contains language that will enable Missouri to comply with the new requirements of IDEA 2004.

I hope this letter will clarify issues that the SEAP raised at the last meeting.

#### **UPDATE/ACTIONS (4/06)**

The panel is resubmitting their recommendation as originally worded and is asking that someone from DESE come to a future panel meeting to discuss.

#### **UPDATE/ACTIONS (6/06)**

##### **Response Deana O'Brien received from John Copenhaver, Director of the Mountain Plains Regional Resource Center:**

*I apologize for the delay in responding to your e-mail and question. I have read your letter and formal recommendation to Melodie Friedebach and the response from DESE.*

*In reviewing the policies and procedures of other Advisory Panels in our region, it appears the process is very similar to what is outlined in Ms. Friedebach's response; that is, one function of the Panel in IDEA 2004 is to "comment publicly on any roles or regulations proposed by the State Education Agency regarding the education of children with disabilities." When federal regulations change to State regulations, the Panel will have an opportunity to comment.*

*The issue of notifying the SEAP of pending legislation, rule making, regulation or policy changes would be discretionary on the part of the State Education Agency. The duty and responsibility of the Panel is to advise and suggest around the functions mentioned in the law.*

*I suppose as private citizens, panel members could comment on proposed legislation as long as it wasn't on behalf of the Advisory Panel but as a private citizen and in a proper manner.*

*Some State Directors in our region routinely report on legislation or policy changes that would impact the education of children with disabilities during their "State of State" report to the Panel. This information keeps the Panel aware of issues that impact special education in the State.*

*I hope this helps as the Panel moved forward. Thank you.*

**UPDATE/ACTIONS (6/06)**

DESE is reviewing for possible discussion at a future meeting.

**UPDATE/ACTIONS (8/06)**

At the June 19 meeting, it was proposed that DESE begin to share with the panel the current state plan and possible changes that might be made to Missouri regulations due to final federal regulations. The consensus of the panel was this might resolve this issue. This process will begin with the August SEAP meeting with a DESE presentation on IEP requirements to the panel.

**FINAL RESOLUTION (date)**